

**ORIGINAL**

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MAY 20 1984

ALEXANDER L. STEVENS  
CLERK

No. 83-6591

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

RATIMIR MAXIMILIAN PERSHE,

Appellant,

VS.

ENRIQUE IRIZARRY, President of the  
Council of Higher Education of the  
University of Puerto Rico; ISMAEL  
ALMODOVAR, President of the University  
of Puerto Rico; ANTONIO MIRÓ MONTILLA,  
Chancellor of the Río Piedras Campus of  
the University of Puerto Rico; DENNIS  
MARTINEZ IRIZARRY, Dean of the Law  
School of the University of Puerto Rico

Appellees

On Appeal from the Supreme Court of  
The Commonwealth of Puerto Rico

MOTION TO DISMISS

(Proceedings are in Forma Pauperis)

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Comes now the appellees through their undersigned attorneys and respectfully allege and pray:

1. Profesor Ratimir Maximilian Pershe celebrated his 65th birthday on May 24, 1981 after serving the Law School of the University of Puerto Rico for 18 years. Upon reaching the age of 65, applicable rules and regulations for the University's employees made it mandatory for such an employee to retire. (Appellee's Exhibit 1 consists of Rule or "Certification" 59 and its translation into English is Exhibit 2). If the employee wanted to continue rendering services to the University an application had to be filed with the Board of Directors of the University (known as the Council of Higher Education) in order to obtain a deferment on a year to year basis. (Complementary Norms for Processing Deferment of the Obligatory Retirement of the University of Puerto Rico personnel, Certification number 59, 1972-73 of the Council of Higher Education, Exhibits 1 and 2).

Professor Pershe filed his application in accordance with the established regulations. However, the pertinent authorities denied the same after receiving negative recommendations from the Dean of the Law School, the Chancellor and the President of the University of Puerto Rico. Professor Pershe's application was not recommended by anyone in the pertinent administrative structure of the University. (See Exhibit 3 and its translation Exhibit 4).

These facts gave rise to this voluminous case which covered legal actions in four different forums: the Council of Higher Education (CHE), the Superior Court of San Juan, the Supreme Court of Puerto Rico and now this Honorable Court.

In his jurisdictional statement under the section "Questions Presented" appellant alleges very serious accusations against the Dean of the Law School, of "secret fraudulent imputations" made "intentionally" by the said dean... "in conspiracy with the Chancellor, 1/ the President of the University, and the President of the CHE." 2/ (Page 2 of appellant's Jurisdictional Statement).

The denial of the right to a hearing is stressed and repeated by the appellant which, together with allegations of fraudulent imputations and conspiracy to defraud seem to state a constitutional issue, thus obtaining jurisdiction before this court. It also seems to raise a federal question.

We would like to clarify the background and the facts as they were litigated before the Commonwealth courts in order to prove to this Honorable Court that under Rule 16 of the U.S. Supreme Court Rules:

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1/ However, on page 4 of the jurisdictional statement we seem to wonder whatever happened to the alleged conspiracy when appellant alleges that "the Chancellor was about to change his recommendation into a favorable one".

2/ The conspiracy also involved "Mr. Burgos" the associate Secretary of the CHE and by his "coworker" whose name we are not informed.

a) This case does not present a substantial federal question;

b) The judgment rests on an adequate non federal basis;  
and

c) The question on which the decision of the cause depends are so unsubstantial as not to need further argument.

I

By his own admissions Prof. Pershe led a meritorious career in the Law School of the University of Puerto Rico. (Page 1-3 of the "Statement of the Case")

He was also granted several sabbatical leaves in order to prepare his hypothesis on "the natural science of human law" or the "biophysical characteristic of law".

It seems he was treated with respect and fairness by the administration of the Law School during many years until certain administrative discrepancies and personal problems began to arise between Dr. Pershe and the new dean of the Law School during the last portion of his tenure. These problems apparently arose after 1978. (Pages 19 thru 22 of appellant's jurisdictional statement)

Appellant presented several exhibits (J 505-506-507-769-770 786-795-810) describing a certain controversy involving approximately 1629 books borrowed by Dr. Pershe during the course of time and which he apparently kept at his house for personal reference. Not that any illegality is now being alleged from this fact, but if the discretionary powers of the University's governing body are at stake and its administrative discretion is under attack, then we should be aware of the existence of controversy and personal issues between the parties.

It also appears from appellant's exhibits (J-508) that the Law School was suffering from a lack of sufficient office space for its full time professors at the time Dr. Pershe's deferment was being considered.

From all of this, the Law School's personnel committee seems to have "unfavorably recommended" appellant's deferment petition due to "communication difficulties with this professor". (Exhibits 3 and 4).

(Also see appellant's exhibits J-841-842-843). From our Exhibits 3 and 4 it arises that neither the Chancellor of the Río Piedras Campus nor the President of the University of Puerto Rico recommended the request for deferment. Such was the situation before the CHE when it met to consider Mr. Pershe's extension petition. To have granted a deferment under such circumstances would have meant that the CHE had to overrule all the chief administrators of the University from the President down to the Dean of the Law School and its personnel committee. In fact, it denied the petition (Exhibits 5 and 6).

It should be beyond the scope of this Honorable Supreme Court to enter into personal disputes by and between law professors and law school deans of a distinctly local nature.

When the law mandates retirement, said law (like all laws) must be obeyed. An exception to the law or exemption from it is an administrative decision to be decided by the administrative body created for such purpose at their discretion and from the record of the employee taken as a whole.

The courts may not invade the field of discretion conferred by laws upon an administrative agency.

(New York v. United States, 331 US 284, 91 L ed 1492, 67 S Ct 1207; American Power & L Co. v. Securities & Exch. Com. 329 US 90, 91 L ed 103, 67 S Ct. 133; Phelps Dodge Corp. v. NLRB, 313 ALR 1217; Haggerty v. Oakland 161 Cal App 2d 407, 326 P2d 957, 66 ALR 2d 718; State ex rel. Burnquist v. District Ct. 141 Minn 1, 168 NW 634, 3 ALR 1476; Small v. Moss, 277 NY 501, 14 NE 2d 808.

The discretion reposed in administrative agencies is one of the outstanding characteristics of such agencies, and this discretion is recognized and respected upon judicial review of administrative action. In fact, an administrative agency is on sounder ground in establishing a particular doctrine as an announced exercise of its own discretion than in attempting to found the same doctrine on judicial pronouncements which the highest court may not regard as sufficient.

(Texas Gas Transmission Corp. v. Shell Oil Co. 363 US 263, 4 L ed 2d 1208, 80 S Ct 1122; Federal Communications Com. v. R. C. A. Communications, Inc. 346 US 86, 97 L. ed 1470, 73 S Ct 998; Securities & Exch. Com. v. Chenery Corp. 332 US 194, 91 L ed 1995, 67 S Ct 1575, 1760, reh den 332 US 783, 92 L ed 367, 68 S Ct. 26.)

The very essence of a discretionary power is that the person or persons exercising it may choose which of several permissive courses will be followed.

(Secretary of Agriculture v. Central Roig Refining Co. 338 US 604, 94 L ed 381, 70 S Ct 403; Commonwealth ex rel. Meredith v. Frost, 295 Ky 137, 172 SW 2d 905).

Discretion is defined, when applied to public functionaries other than courts, to be a power or right, conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience as to what is just and proper under the circumstances, uncontrolled by the judgment or conscience of others.

(Ex parte Anderson, 191 Or 409, 229 P2d 633, 230 P2d 770, 29 ALR2d 1051. See United States ex rel. Accardi v. Shaughnessy, 347 US 260, 98 L ed 681, 74 S Ct. 499).

The courts may not invade the field of discretion conferred by law upon an administrative agency.

(New York v. United States, 331 US 284, 91 L ed 1492, 67 S Ct. 1207; American Power & L. Co. v. Securities & Exch. Com. 329 US 90, 91 L ed 103, 67 S Ct. 133; Phelps Dodge Corp. v. NLRB, 313 US 177, 85 L ed 1271, 61 S Ct. 845, 133 ALR 1217; Haggerty v. Oakland, 161 Cal App 2d 407, 326 P2d 957, 66 ALR2d 718; State ex rel. Burnquist v. District Ct. 141 Minn 1, 168 NW 634, 3 ALR 1476; Small v. Moss, 277 NY 501, 14 NE2d 808).

This is what the Superior Court of San Juan (Exhibits 7 & 8) and the Supreme Court of Puerto Rico (Exhibits 9, 10, 11 & 12) decided based on sound administrative law.

Clearly no substantial federal question was present in the case.

The rule making powers of the University of Puerto Rico and of its governing body, the Council of Higher Education (CHE) arises from state law number 10 of January 20, 1966, as amended, (18 LPRA 601 et seq.)

Under these powers granted by the legislature of the Commonwealth of Puerto Rico it seems that the University through the Council of Higher Education approved through the years several decrees regulating retirement rights, benefits and procedures for the University's employees.

Under the applicable rules in existence on September, 1983 it was mandatory for employees to retire upon reaching the age of 65.

We translated Certification Number 59, of 1972-73 issued by the CHE and which is the main source of controversy in this case. (See Exhibit "2"). Throughout this rule (called "Certification" by the CHE) the retirement process and its deferment possibilities are regulated in detail. Even though the rule talks about the "right to Deferment" it is clear that it means the right to request deferment. It is also clear that the CHE retains the power to decide or resolve finally what it considers adequate. (Page 3, Sec. II. First clause Exhibit "2").

The rule is definite and specific as to the time to request deferment, the length (one year) of such extension if approved, forms to be filled out, administrators that must handle the applications and issue the appropriate recommendations, and the date for CHE's final consideration. It also covers the number of days given to certify the decision and notification of the decision as well as the number of copies of the decision to be issued and to whom.

Very little, if any, in the retirement - deferral process is left to the administrator's discretion, except the recommendation. Even so, several recommendations were requested (in Pershe's case) from the Dean of the School, Chancellor of University and the President of the University. Upon these endorsements or opinions the CHE drew its conclusions. 3/

To attack this process as unconstitutional or in violation of the due process clause of the Constitution of the United States is to turn its back from the administrative and discretionary powers of the CHE. Also, it means trying to involve the U.S. Supreme Court into the menial task of running a state university and deciding on its hiring policies under the pretext that a federal question is involved.

Again, no federal question is really present, only a common, ordinary administrative law problem.

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3/ In other rules (see appellant's exhibits J-576, 577 and 578) the CHE enters upon the hiring or rehiring practises and limitations of retired personnel.



II

Professor Pershe seems to convey the erroneous impression in his Jurisdictional Statement that he has been the only professor to have been denied deferment 4/ by the University of Puerto Rico. To be more in line with the facts, we should examine appellant's exhibits J-839 and J-840 which we translated for this Court. (Exhibits 13 & 14). Mr. Pershe's deferment petition was considered by the CHE together with twenty five other applicants for deferment; twenty were approved and five were denied. 5/ Among the five denied was appellant's petition. These applications are handled yearly by the CHE as a matter of routine, and as part of its administrative responsibilities.

III

If any doubt as to Mr. Pershe's right to a hearing or review exists in the mind of this court, we would like to remind this Honorable Court of the following:

Mr. Pershe's judicial review of the CHE's administrative decision was thorough and complete. Not only did he have several hearings before the Superior Court of San Juan, but also a review through Certiorari before the Supreme Court of Puerto Rico. At first instance the Superior Court granted Pershe's request for temporary relief and ordered reinstatement of the Professor in his academic duties until such time as the case was finally adjudicated on its merits.

However, the Supreme Court of Puerto Rico, reversed this order establishing that the CHE's determination was clearly of a discretionary nature and therefore not to be set aside by judicial review in the absence of extraordinary circumstances. (Exhibits 9 & 10).

In line with this reasoning, the Superior Court again took matters into consideration and finally adjudicated that (J-242)..." the petitioner had not shown that the respondents abused their discretion, neither that he had a clear right to

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4/ Appellant is clear that he means the only professor in the Law School of the University of Puerto Rico.

5/ The other four were also from the University of Puerto Rico, Rio Piedras Campus



hearing before the Council of Higher Education. (Exhibits 7 & 8).

Again the matter was taken before the Honorable Supreme Court of Puerto Rico where this Court affirmed the lower court's decision and denied four motions of reconsideration (Exhibits 15 & 16") extensively argued and pleaded by Professor Pershe.

#### IV

The main theory of the appellant is that he had a right to an evidentiary hearing before the CHE in petitioning for deferment or requesting reconsideration.

It seems that the appellant does not argue that the detailed process under the rules governing the deferment was not followed. What he seems to be saying is:

a) That he had a right to a hearing before the CHE in order to present certain evidence on his good qualifications and/or to prove certain fraudulent imputations made against his good name. He claimed before the CHE that these fraudulent imputations were behind the unfavorable recommendation by the Dean. With this evidence he wanted to convince the CHE to reconsider. Such an evidentiary hearing before the CHE allegedly was not given.

b) In sound contract law and under the Puerto Rico Civil Code he had the "right" to have his contract renewed.

Let us first examine his request for an evidentiary hearing. Mr. Pershe does not explain nor detail exactly what were the alleged fraudulent imputations made against his person and/or good name in conspiracy by and between the Dean of the Law School, the Chancellor, the President of the University and the President of Council of Higher Education (as well as some of their executive personnel). He alleges the existence of such fraudulent imputations and emphasizes the excellence of his work together with the endorsement of his students in order to justify a reversal of the administrative discretion and the administrative decision of said Dean, Chancellor and President.

He wanted an evidentiary hearing before the CHE in support of his motion of reconsideration in order to prove his allegations of excellence as a professor and fraudulent imputations

to examine his record together with the recommendations of the Dean, Chancellor and President and with this issued their decision. This was the standard procedure by the CHE followed yearly in processing deferment petitions. No hearing before the CHE was ever granted under such circumstances and for such petitions.

The main problem with Pershe's petition for hearing was that neither the alleged conspiracy nor the secret fraudulent imputations ever arose before any person, nor before any administrative officer, nor before any forum. It was never an issue before the CHE (nor the Dean, nor the Chancellor nor the President). There were no documents nor any evidence containing derogatory remarks nor opinions about Mr. Pershe before any administration nor before any administrative body.

The only document alleging the existence of any kind of fraudulent imputations whatsoever was raised solely by Mr. Pershe himself. He claims someone had falsely accused him but the CHE did not find any evidence in that direction of who said what, which was false. The CHE examined recommendations for deferment and all were negative. This was the standard proceeding; this is what was followed.

The CHE had before itself a document (Exhibits 3 & 4) with an unfavorable recommendation from the three highest ranking officials at the University of Puerto Rico. These were the people who knew him, knew of his record, could attest to his qualifications and had to make a recommendation according to the regulations.

The right to a hearing is not absolute in administrative law. In many situations a hearing is required neither by statute, regulation, nor by the due process clause and such situations are not limited to those in which a statute expressly provides that no notice and hearing is necessary.

(Cafeteria & Restaurant Workers Union v. McElroy, 367 US 886, 6 L ed 2d 1230, 81 S Ct 1743; People ex rel. Bluett v. Board of Trustees, 10 Ill App 2d 207, 134 NE2d 635, 58 ALR2d 899 (emphasizing lack of authority to compel attendance of witnesses or to compel them to testify); Walker v. Clinton, 244 Iowa 1099, 59 NW2d 785; State ex rel. Leggett v. Jensen (Mo) 318 SW2d 353; Leach v. Coleman (Tex Civ App) 188 SW2d 220, error ref. w m; Green Mountain Post v. Liquor Control Board, 117 Vt 405, 94 A2d 230, 35 ALR2d 1060.

It is not essentially arbitrary for an administrative agency to exercise its lawful authority without a hearing where none is required.

(Albert v. Public Service Com. 209 Md 27, 120 A2d 346 (application of group of taxicab drivers for 100 permits to operate taxicabs); Ex parte Anderson, 191 Or 409, 229 P2d 633, 230 P2d 770, 29 ALR2d 1051 (revocation of parole); Thayer Amusement Corp. v. Moulton, 63 RI 182, 7 A2d 682, 124 ALR 236 (application for motion-picture license); State ex rel. Billado v. Wheelock, 114 Vt 350, 45 A2d 430 (application for liquor license).

Many cases held that where the purpose of an administrative determination is to decide whether a right or privilege which an applicant does not possess shall be granted to him or withheld in the exercise of a discretion vested by statute, notice and hearing is not necessary in the absence of an express or implied statutory provision thereof, and a statute may provide for such determinations without requiring notice and hearing.

(Jay v. Boyd, 351 US 345, 100 L ed 1242, 76 S Ct 919 (unfettered discretion); Garden Court Apartments v. Hartnett, 45 Del 1, 65 A2d 231 (application for building permit; hearing provided on appeal to city council); Albert v. Public Service Com. 209 Md 27, 120 A2d 346 (license to operate taxicab was mere privilege); Adams Theatre Co. v. Keenan, 12 NJ 267, 96 A2d 519 (theatre license; opportunity to test basis of action upon judicial review); Fink v. Cole 1 NY2d 48, 150 NYS2d 175, 133 NE2d 691 (racing license is privilege); Thayer Amusement Corp. v. Moulton, 63 RI 182, 7 A2d 682, 124 ALR 236 (license to show motion picture is mere privilege); State ex rel. Billado v. Wheelock, 114 Vt 350, 45 A2d 430 (liquor license; discretion was quasi-judicial in character).

If no personal or property rights are involved, but only a "privilege", notice or hearing may not be essential to due process of law even though the power exercised is recognized as quasi-judicial or adjudicatory, particularly where the statute provides for judicial review of the administrative determination. Similarly, it is held that where a right is granted conditionally and subject to termination, it may be withdrawn in accordance with the conditions subject to which it was received, including the absence of any right to hearing.

(Cook Cleland Catalina Airways, Inc. v. Civil Aeronautics Board, 90 App DC 220, 195 F2d 206; Darling Apartment Co. v. Sringer, 25 Del Ch 420, 22 A2d 397, 137 ALR 803. Walker v. Clinton, 244 Iowa 1099, 59 NW 2d 785 (revocation of beer permit); Hadden v. Aitken, 156 Neb 215, 55 NW2d 620, 35 ALR2d 1003 (suspension of driver's license); State ex rel. Billado v. Wheelock, 114 Vt 350, 45 A2d 430 (license to sell intoxicating liquors); School Dist. v. Callahan, 237 Wis 560, 297 NW 407, 135 ALR 1081 (consolidation of school districts). Doyle v. Kahl, supra; Green Mountain Post v. Liquor Control Board, 117 Vt 405, 94 A2d 230, 35 ALR2d 1060).

Retirement due to age is not the equivalent of a discharge. (Ellmore v. Bruckner, 236 F 2d 734, 1 L Ed 44 77 S Ct. 329). There is no right to a hearing in cases such as this. (Geary v. Phillips, 278 NY 2d 506).

This is especially true in cases where the retirement for termination of employment is mandatory by law and the deferment is discretionary. The Supreme Court of Puerto Rico as recently as 1982 in the case of Sánchez Carambot v. Matheu, decided on June 17, 1982 (82 JTS 100, page 2750) reiterated the doctrine that courts should not substitute their opinion with administrative decisions of University authorities, even in cases where disciplinary measures are being reviewed; unless there is manifest excess or error.

V

What about Pershe's contract law theory about his right to review?

He claims that when he acquired the right to tenure he also acquired "a right to implied tenure, to be removed only for cause, after he has arrived at the retirement age" (page 27)

The problem with this theory is that this is not what the law or regulation says. If he is working with the University of Puerto Rico he must abide by the University's laws. The law was clear in that his retirement was mandatory at the age of 65 and only created the right to request a deferment from the Council of Higher Education. It is contradictory to say that a contract made by the University of Puerto Rico with an employee of said University has an implied condition to the effect that the



University must grant him continuous tenure after reaching the age of 65 when the regulations distinctly say he must retire. A contract may not be contrary to the law (Section 3372 of the Puerto Rico Civil Code 31 LPRA 3372).

Since special regulations ordered the retirement of Mr. Pershe upon reaching the age of 65, and Mr. Pershe lived with this regulation for 18 years, he cannot allege that anything in the contract nor the circumstances surrounding it created a clause that was contrary to the law. Even though the Civil Code of Puerto Rico may contain certain articles that under general circumstances give "usage" certain weight in interpreting implied clauses, such general provisions of the general law may not revoke a clear mandate of a special law.

What we are really trying to say is that the entire issue is local. We are dealing with a contract situation and the Civil Code of Puerto Rico. No federal question of national importance is present.

## VI

The Supreme Court of Puerto Rico as well as the Superior Court of San Juan issued their decision in this case based on sound administrative and contract law as interpreted by them under the local jurisprudence and the Civil Code of Puerto Rico. This decision was also based on the facts.

Denial of deferment only "for cause" is also the theory of appellant. There was cause. The cause was the opposition of the Dean, the Chancellor and the President of the University of Puerto Rico, the very same people whose responsibility it was to hire and fire in the University. Before the Council of Higher Education was a rule saying that Mr. Pershe had to retire, in addition there was the decision of the officials who knew Mr. Pershe and did not personally recommend him. What else could the CHE do? 6/

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6/ We cannot help but mention the extreme of appellant's petty grievances when in his jurisdictional statement, (pages 44 and 45) he takes this court's time in mentioning the problems he had with the Dean of the Law School in the use of certain secretaries for the publication of certain works.

From the above we believe it certain that the judgment issued by the Supreme Court of Puerto Rico rests on an adequate non federal basis. Moreover, the issue is so unsubstantial as not to need further argument.

WHEREFORE, it is respectfully requested that this Honorable Court dismiss the appeal file in this case.

On this 14th of May, 1984.

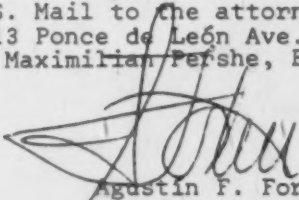
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By: 

Agustín F. Fortuño

PROOF OF SERVICE

The undersigned Agustín F. Fortuño, the attorney of record in the above case for the appellees does hereby state that on the above date, May 14th, 1984 a copy of this Motion to Dismiss was sent through the U. S. Mail to the attorney for the appellant Alberto E. Lugo Janer, 613 Ponce de León Ave., Hato Rey, Puerto Rico 00917, and Ratimir Maximilian Pershe, Box 22251, Rio Piedras, Puerto Rico.

  
Agustín F. Fortuño

/atf

CONSEJO DE EDUCACION SUPERIOR  
UNIVERSIDAD DE PUERTO RICO  
Río Piedras, Puerto Rico

1972-73  
Certificación número 59

Yo, Luis E. González Vales, Secretario Ejecutivo del Consejo de Educación Superior, CERTIFICO:-----

Que el Consejo de Educación Superior en su reunión ordinaria del 9 de febrero de 1973 aprobó las siguientes

NORMAS COMPLEMENTARIAS PARA TRAMITAR EL DIFERIMIENTO  
DEL RETIRO OBLIGATORIO DEL PERSONAL UNIVERSITARIO

I. Base reglamentaria y su interpretación

Las disposiciones que rigen el Diferimiento del Retiro Obligatorio son: A. - El Artículo 1 de la Sección 5 del Capítulo III del Reglamento de la Universidad de Puerto Rico y B. - La Sección 14 del Artículo 5 de la Resolución del Consejo de Educación Superior, de 26 de noviembre de 1950, que estableció el Sistema de Retiro de la Universidad de Puerto Rico, que citamos a continuación:

- A. " Todo miembro del personal docente que no esté afiliado al Plan de Pensiones de la Universidad será jubilado sin pensión al alcanzar la edad de 65 años. Dicha jubilación será efectiva en 30 de junio subsiguiente a la fecha en que el catedrático cumpla los 65 años. A petición del catedrático afectado y con la aprobación del Consejo Superior de Enseñanza, dicha jubilación podrá diferirse después de haber el catedrático cumplido los 65 años por períodos adicionales de un año cada uno. No obstante, en ningún caso se permitirá el diferimiento de dicha jubilación después del 1ro del julio subsiguiente a la fecha en que el catedrático alcance la edad de 70 años.

Este artículo no aplica al personal docente que rinda sus servicios a base de contrato a distinción de nombramiento ni a profesores extraordinarios y visitantes a quienes la Universidad interese aprovechar en determinadas tareas académicas. "



E. "Retiro Obligatorio: A partir del 1ro de julio de 1950 todo miembro que haya alcanzado la edad de 65 años será retirado, con efectividad al 30 de junio siguiente a la fecha que alcanzara dicha edad. Mediante solicitud escrita de un miembro, aprobada por el Consejo de Educación Superior, el retiro de dicho miembro podrá diferirse después de la edad de 65 años, por períodos de 1 año; pero en ningún caso dicho diferimiento podrá pasar del 1ro de julio siguiente a la fecha en que el miembro alcance la edad de 70 años."

La premisa inicial, común a las dos disposiciones previamente transcritas, es que todo miembro del personal universitario, al llegar a los 65 años de edad, será retirado del servicio activo, con efectividad al 30 de junio siguiente. La diferencia entre ambas disposiciones estriba en que la segunda se contrae a los miembros del Sistema de Retiro de la Universidad de Puerto Rico, los cuales serán retirados con derecho a percibir la jubilación que les corresponda, mientras que la primera disposición se refiere a los que no pertenezcan a dicho Sistema de Retiro, que no percibirán de éste jubilación alguna, al ser retirados.

El derecho de decidir si quieren solicitar el Diferimiento del Retiro para el año fiscal siguiente, corresponderá a los interesados que cumplan de 65 a 69 años de edad del 1ro de julio al 30 de junio de cada año fiscal. Será responsabilidad de los interesados el formular dicha petición dentro de los términos y condiciones señalados en las disposiciones antes reproducidas y en estas Normas, que serán de aplicación a todo el personal universitario, excepto a aquél que se encuentre bajo contrato de servicio y a los profesores extraordinarios y visitantes.

## II. Sobre el Derecho al Diferimiento y sus Obligaciones

PRIMERA: Será obligación de los funcionarios superiores del promovente el informar favorable o desfavorablemente la Solicitud de Diferimiento, pudiendo formular las observaciones que estimen atinentes, a los efectos de que el Consejo de Educación Superior pueda resolver finalmente lo que considere adecuado.

SEGUNDA: Todas las Solicitudes de Diferimiento del Retiro se formularán para el siguiente año fiscal completo y sin excederse del mismo, durante cuyo término el interesado se compromete a continuar colaborando con la Institución, quedando impedido de acogerse, durante dicho período, a los beneficios del retiro voluntario.

TERCERA: No se efectuará pago alguno con cargo a los fondos del Sistema de Retiro de la Universidad de Puerto Rico por concepto de jubilación voluntaria, a ningún miembro del Personal Universitario al que se haya concedido el Diferimiento del Retiro durante el año a que dicha petición se contraiga, por entender que al llenar la Solicitud de Diferimiento se está renunciando por un año al derecho de acogerse al retiro voluntario.

CUARTA: Después del 30 de junio de cada año no se efectuará pago alguno contra las cuentas presupuestarias de la Universidad, correspondientes a sueldos, a favor de los miembros del Personal Universitario que estén sujetos al Retiro Obligatorio, caso de no haber sido solicitado y finalmente aprobado el Diferimiento del mismo.

### III. Sobre la Tramitación del Diferimiento

PRIMERA: Del 1ro al 14 de febrero de cada año, las Oficinas de Personal de cada una de las Unidades Institucionales y Administrativas del Sistema Universitario, determinarán cuales miembros del Personal Universitario se encuentran sujetos al Retiro Obligatorio al 30 de junio de ese año. Dichas oficinas procederán a notificarlo así a los interesados, por conducto de los respectivos decanatos o unidades administrativas, advirtiéndoles de su derecho a solicitar el Diferimiento del Retiro Obligatorio, para lo cual les remitirán un juego de los formularios que al efecto haya redactado y distribuido la Oficina de Personal de la Administración Central para todo el Sistema Universitario.

SEGUNDA: Del 15 al 28 de febrero de cada año, los miembros del Personal Universitario, que estén interesados en solicitar el Diferimiento del Retiro Obligatorio procederán a llenar y suscribir el Apartado I del formulario correspondiente. Igualmente, dentro de este término, deberán obtener del Servicio Médico de la Unidad Institucional correspondiente la Certificación Médica que se hará constar en el Apartado II de dicho formulario, relativa al estado de salud del interesado. Además, queda a discreción del Facultativo el utilizar como guía para el examen médico el formulario CP-12. Finalmente, el interesado habrá de devolver este documento a la Oficina de Personal de su Unidad Institucional.

TERCERA: Antes del 15 de marzo de cada año, la Oficina de Personal de la Unidad Institucional o Administrativa correspondiente procederá a llenar y certificar los particulares a que se contrae el Apartado III del Formulario de referencia y a remitir las solicitudes recibidas al Decano de la Facultad, Director del Colegio Regional u Oficina Administrativa a que pertenezca el interesado.

CUARTA: Antes del 31 de marzo de cada año, los Decanos de las Facultades Directores de Colegios Regionales u Oficinas Administrativas elevarán las Solicitudes de Diferimiento que hayan recibido, con las recomendaciones que estimen pertinentes, al Rector de la Unidad Institucional correspondiente, por conducto del Decano de Administración o Funcionario con facultades análogas.

QUINTA: Antes del 15 de abril de cada año, los Rectores de las Unidades Institucionales elevarán las Solicitudes de Diferimiento que hayan recibido, con las recomendaciones que estimen pertinentes, al Presidente de la Universidad de Puerto Rico, por conducto de la Oficina de Asuntos Académicos de la Administración Central.

SEXTA: Del 16 al 30 de abril de cada año, la Oficina de Asuntos Académicos revisará la documentación presentada y preparará una relación de los casos sometidos, expresando los nombres y circunstancias principales, especialmente la función que realiza cada solicitante. El Presidente de la Universidad de Puerto Rico elevará al Consejo de Educación Superior

las Solicitudes de Diferimiento que haya recibido, con las recomendaciones que estime pertinentes, conjuntamente con la relación de casos antes mencionada, por conducto de la Oficina del Secretario Ejecutivo del Consejo.

SEPTIMA: En la primera sesión del mes de mayo, el Consejo de Educación Superior conocerá y resolverá sobre estas peticiones, a todos los efectos ulteriores procedentes.

OCTAVA: Diez (10) días después de la sesión del Consejo, el Secretario Ejecutivo del Consejo procederá a certificar lo resuelto en cada una de las Solicitudes de Diferimiento, reteniendo el original de las mismas y devolviendo las copias a la Oficina de Asuntos Académicos para su posterior distribución, enviando además dos copias certificadas del acuerdo que haya recaído.

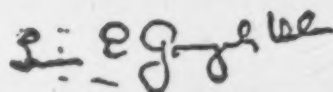
NOVENA: Diez (10) días después de haber recibido las copias certificadas de las Solicitudes de Diferimiento y las Certificaciones del Acuerdo correspondiente, la Oficina de Asuntos Académicos se ocupará de remitir:

1. una de dichas certificaciones del acuerdo del Consejo de Educación Superior a la Oficina Central de Personal;
2. una copia certificada de cada una de las Solicitudes de Diferimiento al Sistema de Retiro de la Universidad de Puerto Rico;



3. una copia certificada de cada una de las Solicitudes de Diferimiento del Personal de cada una de las Unidades Institucionales a sus correspondientes Decanatos de Administración o unidades análogas, a los efectos de ser unidas a los respectivos expedientes, por la Oficina de Personal que proceda;
4. una copia certificada de cada una de las Solicitudes de Diferimiento del Personal de Cada una de las Facultades, Colegios Regionales u otras unidades administrativas, a sus respectivas Oficinas, para su conocimiento y demás efectos procedentes;
5. una copia certificada de cada una de las Solicitudes de Diferimiento del Personal de todo el Sistema Universitario a los propios interesados, a sus direcciones oficiales.

Y para que así conste, expido la presente certificación bajo el sello de la Universidad de Puerto Rico, Río Piedras, Puerto Rico, hoy 9 de febrero de 1973.



Luis E. González Vales  
Secretario Ejecutivo

COUNCIL OF HIGHER EDUCATION  
UNIVERSITY OF PUERTO RICO  
RIO PIEDRAS, PUERTO RICO

1972-73  
Certification number 59

I, Luis F. González Vales, Executive Secretary of the Council of Higher Education, CERTIFY:-----

That the Council of Higher Education in its ordinary meeting of February 9, 1973 approved the following

COMPLEMENTARY RULES TO HANDLE THE POSTPONEMENT OF THE OBLIGATORY RETIREMENT OF THE UNIVERSITY PERSONNEL

I. Ruling base and its interpretation

The dispositions that rule the Postponement of the Obligatory Retirement are: A.-Article 1 of Section 5 of Chapter III of the Regulations of the University of Puerto Rico and B.- Section 14 of Article 5 of the Resolution of the Council of Higher Education, of November 28, 1950, which established the Retirement System of the University of Puerto Rico, which we cite below:

- A. "All member of the teaching personnel not affiliated to the Pensions Plan of the University will be retired without pension upon reaching age 65. Said retirement will be effective on June 30 subsequent to the date in which the professor becomes 65 years old. At the request of the affected professor and with the approval of the Council of Higher Education, said retirement could be postponed after the professor has become 65 years old for additional periods of one year each. Nevertheless, at no time the postponement of said retirement will be allowed after July 1st subsequent to the date in which the professor becomes 70 years old.

This article does not apply to the teaching personnel who renders services based on a contract with distinction of title nor extraordinary professors and visitors of whom the University interests to take advantage in determined academic tasks."



- B. "Obligatory Retirement: From July 1st, 1950 all member who has reached the age of 65 will be retired, with effectivity on June 30 following the date in which he becomes said age. Through written request from a member, approved by the Council of Higher Education, the retirement of said member could be postponed after the age of 65, for period of 1 year; but in no case said postponement could pass of July 1st following the date in which the member reaches the age of 70 years."

The initial premise, common to the two dispositions previously transcribed, is that all member of the university personnel, upon reaching the age of 65, will be retired of the active service, with effectivity on the following June 30. The difference between both dispositions is based in that the second has to do with the members of the Retirement System of the University of Puerto Rico, whom will be retired with the right to receive the corresponding retirement, while the first disposition refers to those whom to not belong to said Retirement System, whom will not receive any retirement, upon being retired.

The right to decide if they want to request the Postponement of the Retirement for the following fiscal year, will correspond to those interested whom will become from 65 to 69 years old from the 1st of July to the 30th of June of each fiscal year. It will be the responsibility of those interested to perform said petition within the terms and conditions pointed out in the dispositions previously reproduced and in these Rules, which will be of application to all the personnel of the university, except of those under contract of service and the extraordinary professors and visitors.

II. Regarding the Right to Postponement and its Obligations

FIRST: It will be the obligation of the superior officials of the promoter to inform favorably or unfavorably the Request of the Postponement, being able to formulate the observations deemed pertinent, to the effects that the Council of Higher Education could resolve finally that considered adequate.

SECOND: All the Requests of Postponement of the Retirement will be formulated for the following complete fiscal year and without exceeding from same, during which term the interested party compromises to continue collaborating with the Institution, being impeded to acquire, during said period, to the benefits of the voluntary retirement.

THIRD: No payment will be made charged to the funds of the Retirement System of the University of Puerto Rico for the concept of voluntary retirement, to no member of the University Personnel to whom Postponement of the Retirement has been granted during the year to which said petition is contracted, for understanding that upon fulfilling the Request of Postponement he is waiving for a year to the right of acquiring the voluntary retirement.

FOURTH: After June 30th of each year no payment will be made against the budgeting accounts of the University, correspondant to salaries, in favor of the members of the University Personnel which are subject to the Obligatory Retirement, in case that it has not been requested and finally approved the Postponement of same.

III. Regarding the Handling of the Postponement

FIRST: From the 1st to the 14th of February of each year, the Personnel Offices of each of the Institutional and Administrative Units of the Sistem of the University, will determine which members of the University Personnel are subject to the Obligatory Retirement at Jun 30 of that year. Said offices will proceed to notify so to the interested, through the respective deaneries or administrative units, advising them of their right to request Postponement of Obligatory Retirement, for which a set of the forms will be remitted that to the effect the Personnel Office of the Central Administration has edited for all the University System.

SECOND: From February 15 to the 28th of each year, the members of the University Personnel, whom are interested in requesting the Postponement of the Obligatory Retirement will proceed to fulfill and suscribe Blank I of the corresponding form. As well, within this term, they should obtain from the Medical Service of the corresponding Institutional Unit the Medical Certification which will be mentioned in Blank II of said form, relative to the health condition of the interested. Also, it is to the discretion of the Executive to utilize as a guide for the medical examination form OP-12. Finally, the interest should return this documento to the Personnel Office of his Institutional Unit.

THIRD: Prior to March 15 of each year, The Personnel Office of the Institutional Unit or corresponding Administrative Unit will proceed to fulfill and certify the particulars to which Item III contracts of the Form of reference and to remit the requests received to the Faculty Dean, Director of the Regional College or Administrative Office to which the interested belongs to.

FOURTH: Prior to March 31 of each year, the Deans of the Faculties, Directors of the Regional Colleges or Administrative Offices will elevate the Requests of Postponement received, with the recommendations they deem pertinent, to the Rector of the corresponding Institutional Unit, through the Dean of Administration or Official with alike faculties.

FIFTH: Prior to April 15th of each year, the Rectors of the Institutional Units will elevate the Requests of Postponement received, with the recommendations deemed pertinent, to the President of the University of Puerto Rico, through the Offices of Academic Matters of the Central Administration.

SIXTH: From April 16 to 30 of each year, the Office of Academic Matters will review the documentation presented and will prepare a relation of the cases submitted, expressing the names and principal circumstances, specially the function that each applicant performed. The President of the University of Puerto Rico will rise to the Higher Education Council

the Requests of Postponement received, with the recommendations deemed pertinent, jointly with the relation of cases previously mentioned, through the Office of the Executive Secretary of the Council.

SEVENTH: In the first session of the month of May, the Council of Higher Education will learn and resolve over these petitions, to all the ulterior proceeding effects.

EIGHTH: Ten (10) days after the session of the Council, the Executive Secretary of the Council will proceed to certify the results in each of the Requests of Postponement, retaining the original of same and returning the copies to the Office of Academic Matters for it's posterior distribution, also remitting two certified copies of the agreement reached.

NINTH: Ten (10) days after having received the certified copies of the Requests of Postponement and the Certifications of the corresponding Agreement, the Office of Academic Matters will take care of remitting:

1. one of said certifications of the agreement of the Council of Higher Education to the Central Office of Personnel;
2. one certified copy of each of the Requests of Postponement to the Retirement System of the University of Puerto Rico;



3. one certified copy of each one of the Requests of Postponement of Personnel of each of the Institutional Units to their corresponding Deaneries of Administration or alike units, to the effects of being made part of the corresponding files, by the Personnel Office proceeding;
4. one certified copy of each one of the Requests of Postponement of Personnel of Each one of the Faculties, Regional Colleges or other administrative units, to their respective Offices, for their knowledge and other proceeding effects;
5. one certified copy of each of the Requests of Postponement of Personnel of all the University System to the interested themselves, to their official addresses.

And to make it evident, I issue the present certification under the seal of the University of Puerto Rico, Rio Piedras, Puerto Rico, today, February 9, 1973.

(Signed) Luis E. González Vales  
Executive Secretary

SOLICITUD DE DIFERIMIENTO DE RETIRO OBLIGATORIO  
DE PERSONAL UNIVERSITARIO

EXHIBIT 3

INSTRUCCIONES:

Sométase este formulario en original y cuatro copias, no más tarde del 14 de febrero, si cumple de 65 a 69 años de edad a más tardar el 30 de junio de este año. Trámítase en el orden establecido al enumerar los Apartados.

DISTRIBUCION: (Después de que se haya terminado todo el proceso)

Original: Al Consejo de Educación Superior, copias: 1ra. al interesado; 2da. al Decano, al Director del Colegio Regional o al Director de la Oficina Administrativa; 3ra. a la Oficina de Personal correspondiente; y 4ta. al Sistema de Retiro de la Universidad de Puerto Rico.

Señor Presidente:

De acuerdo con las disposiciones de la Sec. 5 del Cap. III del Reglamento Universitario y con la Sec. 14 del Art. 5 de la Resolución del Consejo de Educación Superior del 28 de noviembre de 1950, que estableció el Sistema de Retiro de la Universidad de Puerto Rico, las cuales autorizan al personal universitario a solicitar diferimiento de la jubilación obligatoria al alcanzar la edad de 65 años, por la presente pido se me conceda diferimiento de dicha obligación hasta el 30 de junio de 19\_\_\_. Al radicar esta solicitud me comprometo a continuar colaborando con la Institución durante el mencionado período.

I. Información a ser suplida por el solicitante:

1. Nombre completo RATIMIR MAXIMILIAN PERSHE
2. Fecha de Nacimiento Mayo 24, 1916
3. Años de servicio bajo diferimiento de retiro obligatorio 0
4. Soy miembro del Sistema de Retiro de la Universidad de Puerto Rico SI ☒ NO ☐
5. Rango o Título Profesor de Leyes
6. Departamento u Oficina Escuela de Derecho
7. Facultad o Unidad Administrativa U.P.R.
8. Recinto o Unidad Institucional Río Piedras

2 de abril de 1981

FECHA

R. Mar Pershe

FIRMA DEL SOLICITANTE

II. Certificado Médico, expedido por un Facultativo del Servicio Médico del Recinto o de la Unidad Institucional correspondiente:

Yo, Noel Rivera Torres, MD, luego de haber practicado el examen de rigor a PROF. R. MAX Pershe (use letra de molde), utilizando al efecto el formulario OP-12 que se acompaña a esta solicitud, certifico que su estado de salud es satisfactorio y está capacitado para desempeñar las tareas propias de su cargo, según fueron éstas descritas por el interesado.

2 de abril de 1981

FECHA

Noel Rivera Torres, MD  
FIRMA DEL MEDICO EXAMINADOR DEL  
RECINTO O UNIDAD INSTITUCIONAL



III. Para uso de la Oficina de Personal de la Unidad Institucional o Administrativa:

1. Nombre del solicitante Ratimir Maximilian Parsha
2. Fecha de Nacimiento 24 de mayo de 1916
3. ☐ Tiene ☒ No tiene Certificación del Acta de Nacimiento.
4. Al 30 de junio de 1981 tendrá 65 años de edad.
5. Rango o Título Catedrático
6. Tipo de nombramiento Permanente
7. Departamento u Oficina Oficina del Decano
8. Facultad o Unidad Administrativa Facultad de Derecho
9. Facultad o Unidad Institucional Universidad de Puerto Rico

Certificado por: *Quié Leonardo P*  
DIRECTOR DE PERSONAL

IV. Información a ser suplida por el Decano de la Facultad o Director de la Oficina en la cual el solicitante presta servicios:

- a) Tareas que se le asignarán, de concedérsele el diferimiento:

Terminar investigación sobre la Teoría Biofísica del  
Derecho, en lo cual ha estado trabajando desde hace  
mucho tiempo, habiéndosele concedido sabática en 1972 y  
en 1979 para esos propósitos.

- b) Se recomienda esta petición ☐ Favorablemente ☒ Desfavorablemente

Observaciones: El Comité de Personal recomendó desfavora-  
blemente esta petición por entender que existen dificultades  
de comunicación en este profesor.

14 de abril de 1981  
FECHA

*Antonio Miró Montilla*  
DECANO DE LA FACULTAD, DIRECTOR DEL  
COLEGIO REGIONAL U OFICINA

V. Para uso de la Oficina del Rector o Director de la Unidad Institucional:

Se recomienda esta petición ☐ Favorablemente ☒ Desfavorablemente

Observaciones: \_\_\_\_\_

14 de abril de 1981  
FECHA

*Antonio Miró Montilla*  
RECTOR DEL RECINTO O DIRECTOR DE LA  
UNIDAD INSTITUCIONAL

VI. Para uso de la Oficina del Presidente de la Universidad:

Habiendo examinado la presente solicitud de diferimiento de retiro,  
la recomiendo ☐ Favorablemente ☒ Desfavorablemente

Observaciones: \_\_\_\_\_

APR 22 1981

FECJA

*[Handwritten signature]*

VII. Certificación de lo resuelto por el Consejo de Educación Superior:

La solicitud que antecede fue aprobada ☐, desaprobada ☒,  
según acuerdo de este organismo, Núm. 175 de fecha 29 de mayo  
de 1981.

*[Handwritten signature]*  
SECRETARIO EJECUTIVO

RSI/cd

OCP-39  
Rev. January 1972

UNIVERSITY OF PUERTO RICO  
CENTRAL ADMINISTRATION

APPLICATION OF POSTPONEMENT OF OBLIGATORY  
RETIREMENT OF THE UNIVERSITY PERSONNEL

INSTRUCTIONS:

Submit this form in original and four copies, no later than February 14, if you become from 65 to 69 years old the latest on June 30 of this year. Carry through in the order established upon numbering the Blanks.

DISTRIBUTION: (After the entire process has been concluded)

Original: To the Council of Higher Education, copies: 1st. to the interested; 2nd. to the Dean, the Director of Regional College or the Director of the Administrative Office; 3rd. to the corresponding Personnel Office; and 4th. to the Retirement System of the University of Puerto Rico.

Mr. President:

According to the dispositions of Sec. 5 of Chap. III of the University Regulation and with Sec. 14 of Art. 5 of the Resolution of the Council of Higher Education of November 28, 1950, which established the Retirement System of the University of Puerto Rico, which authorize the university personnel to request a postponement of the obligatory pensioning upon reaching age 65, through the present I request a postponement be granted to me of said obligation until June 30 of 19\_\_\_. Upon filing this request I compromise to continue collaborating with the Institution during said period.

I. Information to be supplied by the applicant:

1. Complete name - RATIMIR MAXIMILIAN PERSHE
2. Birthdate-May 24, 1916
3. Years of service under postponement of obligatory retirement-0
4. I am a member of the Retirement System of the University of Puerto Rico-YES ☒ NO ☐
5. Rank or Title-Law Professor
6. Department or Office - Law School
7. Faculty or Administrative Unit - U.P.R.
8. Precinct or Institutional Unit - Rio Piedras

April 2, 1981

(signed) R. Max Pershe

DATE

SIGNATURE OF APPLICANT

II. Medical Certificate issued by a Physician of the Medical Service of the Precinct or the corresponding Institutional Unit:

I, Noel Rivera Torres, MD, after having performed the (use print) due examination to Prof. R. Max Pershe, utilizing to the effect the form OP-12 accompanied to this request, I certify that his health status is satisfactory and is capable to perform the due chores of his appointment, as these were described by the interested.

April 2, 1981

(signed) Noel Rivera Torres, M.D.

DATE

SIGNATURE OF THE EXAMINING  
DOCTOR OF THE PRECINCT OR INSTITUTIONAL  
UNIT

III. For the use of the Personnel Office of the Institutional Unit or Administrative Unit.

1. Name of applicant - Ratimir Maximilian Perse
2. Date of Birth - May 24, 1916
3. ☐ Has ☒ Does not have a Birth Certificate certification.
4. At June 30, 1981 will be 65 years old.
5. Rank or Title - Professor
6. Type of appointment - Permanent
7. Department or Office - Dean's Office
8. Faculty or Administrative Unit - Law Faculty
9. Faculty or Institutional Unit - University of Puerto Rico

Certified by: \_\_\_\_\_ (signed)  
PERSONNEL DIRECTOR

IV. Information to be supplied by the Dean of the Faculty or Director of the Office in which the applicant renders services:

- a) Tasks that will be assigned to him, if the postponement is granted:

To conclude the investigation of the Biophysic Theory of the Law, in which he has been working since a long time ago, having been granted sabbatical in 1972 and on 1979 for those purposes.

- b) This petition is recommended ☐ Favorably ☒ Unfavorably  
Observations: The Personnel Committee recommended unfavorably this request for understanding that difficulties exist in communication with this professor.

April 14, 1981 (signed) DEAN OF FACULTY, DIRECTOR OF  
DATE REGIONAL COLLEGE OR OFFICE

V. For the use of the Office of the Rector or Director of the Institutional Unit:

This request is recommended ☐ Favorably ☒ Unfavorably  
Observations: \_\_\_\_\_

April 14, 1981 (signed) Antonio Miró Montilla  
DATE RECTOR OF THE PRECINCT OR DIRECTOR OF THE INSTITUTIONAL UNIT

VI. For the use of the Office of the President of the University:

Having examined the present application of retirement postponement, I recommend it ☐ Favorably ☒ Unfavorably

Observations: \_\_\_\_\_

APR 22 1981 (sealed)

DATE

(Signed) I. Almodovar

PRESIDENT

-----  
-----  
VII. Certification of the resolution by the Council of Higher Education:

The application that preceeds was approved ☐, disapproved ☒ as per agreement of this organism, No. 175 dated May 29, 1981.

(signed) Luis E. González

EXECUTIVE SECRETARY

RSI/cd



J1

AB2-111

P243

CONSEJO DE EDUCACION SUPERIOR  
UNIVERSIDAD DE PUERTO RICO  
Rio Piedras, Puerto Rico

1981-82

Certificación número 32E

Yo, Luis E. González Vales, Secretario Ejecutivo del Consejo de Educación Superior, CERTIFICO:-----

Que el Consejo de Educación Superior en su reunión del 16 de septiembre de 1981 aprobó la siguiente resolución en relación con la Moción de Reconsideración radicada por el Dr. Ratimir Maximilian Pershe ante la denegatoria por parte del Consejo del diferimiento de retiro obligatorio solicitado por dicho profesor:


Este Consejo de Educación Superior estudió la solicitud de diferimiento de retiro obligatorio radicada por el Dr. Ratimir Maximilian Pershe.

Las disposiciones que rigen el diferimiento de retiro obligatorio están recogidas en la Certificación número 59 (1972-73) del Consejo de Educación Superior donde también se establece el procedimiento a seguirse con relación a la solicitud de diferimiento del retiro obligatorio y los trámites ulteriores a la radicación de dicha solicitud.

Es enteramente discrecional del Consejo de Educación Superior la decisión final de lo que considera adecuado ante estas solicitudes.

Estudiado todo el expediente del caso junto con la opinión legal de los asesores del Consejo, se declara sin lugar la reconsideración radicada por el doctor Pershe y se reafirma este Consejo en su decisión anterior de denegar la solicitud sobre diferimiento del retiro obligatorio del doctor Pershe.

Y para que así conste, expido la presente certificación bajo el sello de la Universidad de Puerto Rico, en Rio Piedras, Puerto Rico, hoy día veinticinco de septiembre de mil novecientos ochenta y uno.

  
Luis E. González Vales  
Secretario Ejecutivo

COUNCIL OF HIGHER EDUCATION  
UNIVERSITY OF PUERTO RICO  
Rio Piedras, Puerto Rico

1981-82  
Certification number 32E

I, Luis E. González Vales, Executive Secretary of the Council of Higher Education, CERTIFY:-----

That the Council of Higher Education in its meeting of September 15, 1981 approved the following resolution with the Motion of Reconsideration filed by Dr. Ratimir Maximilian Pershe before the denial on part of the Council of the postponement of the obligatory retirement requested by said professor:

This Council of Higher Education studied the request of postponement of the obligatory retirement filed by Dr. Ratimir Maximilian Pershe.

The dispositions that rule the postponement of obligatory retirement are compiled in Certificate number 59 (1972-73) of the Council of Higher Education where the procedures to be followed is also established regarding the request of postponement of the obligatory retirement and the ulterior transactions to the filing of said request.

It is entirely discretionary of the Council of Higher Education the final decision of what it considers adequate before these requests.

Studied the entire file of the case together with the legal opinion of the Council's advisors, the reconsideration filed by doctor Pershe is declared without cause and this Council ratifies its previous decision of denying the request of postponement of the obligatory retirement of doctor Pershe.

And to make it evident, I issue the present certification under the seal of the University of Puerto Rico, in Rio Piedras, Puerto Rico, today, the twenty fifth of September of nineteen hundred eighty one.

(signed) Luis E. González Vales  
Executive Secretary



EN EL TRIBUNAL SUPERIOR DE PUERTO RICO  
SALA DE SAN JUAN

RATONER MANUELILAN TERRELL

CIVIL NUM. 81-6055 (907)

Recurrente

SOBRE:

v.

ENRIQUE IRIZARRY, PRES. CONSEJO  
EDUCACION SUPERIOR, Y OTROS

SOLICITUD DE REVISION

Recurridos

-----

SENTENCIA

Examinados los autos del caso y la Sentencia del Tribunal Supremo  
revocando nuestra Resolución del 4 de febrero de 1982, se declara sin  
lugar la Petición de Revisión en este caso. El recurrente no ha demos-  
trado que la parte recurrida abusara de su discreción al denegarle la  
solicitud de dispensa ni que tuviera un derecho claro a ser oído.

Regístrese y Notifíquese.

En San Juan, Puerto Rico, a 29 de noviembre de 1982.

(4da.)  
PIERRE ORTIZ  
JUEZ

App D(1)

J\*242

IN THE SUPERIOR COURT OF PUERTO RICO  
SAN JUAN CHAMBER

RATIMIR MAXIMILIAN PERSHE

CIVIL NO. 81-6055 (907)

Petitioner

ABOUT:

v.

PETITION FOR REVIEW

ENRIQUE IRIZARRY, PRES. OF THE  
COUNCIL OF HIGHER EDUCATION,  
AND OTHERS

Respondents

## JUDGMENT\*

Having examined the records of the case and the Judgment of the Supreme Court overruling our Decision of the 4th of February, 1982, I deny the Petition for Review in this case. The petitioner has not shown that the respondents abused their discretion by denying him the petition for dispensation, neither that he had a clear right to be heard.

Enter and Serve.

In San Juan, Puerto Rico, this 29th day of November, 1982.

[signed]  
PETER ORTIZ  
JUDGE

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\*Summary Judgment (this footnote is supplied by the appellant).NOTE: This document has been translated by the appellant.

EN EL TRIBUNAL SUPREMO DE PUERTO RICO

J160

Nativir Maximilian Pershe,

Recurrido,

v.

Enrique Irizarry, etc.,

Peticionarios.

Núm. O-82-185

Certiorari

## SENTENCIA

San Juan, Puerto Rico, a 18 de mayo de 1982.

Al cumplir 67 años de edad el recurrido solicitó de la Sala de la reglamentación que le eximiera de las funciones docentes en la Universidad de Puerto Rico. La dispensa le fue negada. Recurrió a los tribunales.

El Tribunal Superior, Sala de San Juan concluyó que "tratándose de un derecho o interés propietario seriamente afectado, existe una posibilidad real de que el peticionario prevalezca en los méritos de su petición". Por así entenderlo decretó que se le permitiera "seguir ejerciendo como profesor de la Escuela de Derecho en tanto en cuanto se resolviera en sus méritos este recurso".

Acudió la Universidad a revisar esa orden y concedimos un término al recurrido.

La comparecencia del recurrido no persuade. Conceder o no una dispensa es discrecional de la administración universitaria. Bien claro lo establece el Reglamento pertinente al disponer que la jubilación o el retiro según sea el caso "podrá diferirse".

Se expide el auto solicitado y se deja sin efecto la resolución dictada por el Tribunal Superior, Sala de San Juan el 4 de febrero de 1982.

Así lo pronunció y manda el Tribunal y certifica la señora Secretaria. El Juez Presidente señor Tomás Méndez no interviene.



Lady Alfonso de Cumpiano  
Secretaria

## AT THE SUPREME COURT OF PUERTO RICO

Ratimir Maximilian Pershe,

Recurred

v.

Enrique Irizarry, etc.,

Petitioner

No. 0-82-185

Certiorari

## JUDGMENT

San Juan, Puerto Rico, May 18, 1982.

Upon becoming 65 years of age the recurred requested to be exempted of the regulation which requests his separating from his educational functions in the University of Puerto Rico. The exemption was denied. He recurred to the courts.

The Superior Court, San Juan Section concluded that "being a right or proprietary interest seriously affected, a real possibility exists that the petitioner preponderates in the merits of his petition". For understanding so he determined to be allowed to "continue executing as professor of the Law School as respects and and much this recourse is resolved in its merits".



The University went to revise said order and we granted a term to the recurred.

The appearance of the recurred does not persuade. To grant or not an excuse is discretional of the university's administration. It is clearly established by the pertinent Regulation upon disposing that the retirement or pensioning as the case may be "could be deferred".

The requested act is issued and the resolution dictated left without effect by the Superior Court, San Juan Section on February 4, 1982.

So it was pronounced and ordered by the Court y and certifies the Secretary. The Presiding Judge, Mr. Trias Monge does not intervene.

(signed) Lady Alfonso de Cumpiano  
Secretary

12-72  
J/23  
EN EL TRIBUNAL SUPREMO DE PUERTO RICO

Ratimir Maximilian Pershe,

Recurrido,

v.

Enrique Irizarry, etc.,

Peticionarios.

Núm. O-82-185

Certiorari

RESOLUCION

San Juan, Puerto Rico, a 26 de marzo de 1982.

Se concede a la parte recurrida un término de 5 días a partir de la notificación de esta Resolución para mostrar causa por la cual no deba dejarse sin efecto la orden dictada por el Tribunal Superior, Sala de San Juan, Ortiz, J., en el caso civil #81-6055 (906) habida cuenta que el otorgar el diferimiento solicitado por el Profesor Pershe es de la absoluta discreción de las autoridades universitarias. En auxilio de nuestra jurisdicción se suspenden los efectos de la orden recurrida.

Lo acordó el Tribunal y certifica la señora Secretaria. El Juez Presidente señor Trías Monge y el Juez Asociado señor Negrón García no intervinieron.

Lady Alfonso de Cumpiano  
Secretaria

## AT THE SUPREME COURT OF PUERTO RICO

Ratimir Maximilian Pershe,	:	:	
Recurrent	:	:	
v.	:	No. 0-82-185	Certiorari
Enrique Irizarry, etc.,	:	:	
Petitioners	:	:	

## RESOLUTION

San Juan, Puerto Rico, March 26, 1982.

The recurrent party is granted a term of 5 days from the notification of this Resolution to show cause for which the order dictated by the Superior Court, San Juan Branch, should not be left without effect, Ortiz, J., in the civil case #81-6055 (906) having account that the granting of the postponement requested by Professor Perche is of the absolute discretion of the university authorities. In assistance of our jurisdiction the effects of the recurred order are suspended.

The Court resolved and the Secretary certifies. The Presiding Judge Mr. Trias Minge and the Associated Judge, Mr. Negrón García do not intervene.

(signed) Lady Alfonso de Cumpiano  
Secretary

J 839

CONSEJO DE EDUCACIÓN SUPERIOR  
UNIVERSIDAD DE PUERTO RICO  
Río Piedras, Puerto Rico

1980-81

Certificación número 175

Yo, Luis E. González Vales, Secretario Ejecutivo del Consejo de Educación Superior, CERTIFICO:-----

Que el Consejo de Educación Superior, en su reunión del 13 de mayo de 1981 consideró las Solicitudes de Diferimiento de Retiro Obligatorio y acordó lo siguiente:

1- Conceder diferimiento de retiro para el año 1981-82 a las siguientes personas:

Recinto Universitario de Río Piedras

Elna LaVerne Walker	Facultad de Estudios Generales
Eduardo Montouillet García	Escuela Graduada de Planificación
José Ferrer Canales	Facultad de Humanidades
Felix Joglar Rosa	Facultad de Pedagogía

Recinto de Mayaguez

Francis K. S. Koo	Facultad de Artes y Ciencias
Manuel Díaz Piferrer	Facultad de Artes y Ciencias
Lucila M. Díaz Piferrer	Facultad de Artes y Ciencias

Facultad de Ciencias Médicas

William H. Edinson	Facultad de Medicina
Irring Fox	Facultad de Medicina
Candida Larracabal de Barras	Facultad de Medicina
Leo Porchin	Facultad de Odontología
Stoney Rave	Instituto de Medicina Forense
Rafael Criado A. Munategui	Instituto de Medicina Forense
Aida Berkman de Licardi	Escuela de Enfermería
Adelaida Sanavitis	Colegio de Profesiones Relacionadas con la Salud

J840

F692

-2-

1980-81

Certificación número 175

Administración de Colegios Regionales

Bonifacio Rivera González	Colegio Universitario Tecnológico Arecibo
Mariberto de Jesús Rivera	Colegio Universitario Tecnológico Arecibo
Benito Cabrera Medina	Colegio Universitario Tecnológico Arecibo
Luis R. Martínez Fernández	Colegio Regional de Ponce
Pascual Reyes	Colegio Universitario Tecnológico Bayamón

2. Conceder diferimiento de retiro por el mes de julio de 1981 a:

José P. Fernández Miranda Colegio Regional de Carolina

3. Denegar el diferimiento de retiro a las siguientes personas:

Recinto Universitario de Río Piedras

Conchita Monfeldt Hosta	Biblioteca General
Arístides Vázquez Posario	Facultad de Estudios Generales
Ángel G. Bracero Rivera	Departamento de Terrenos y Edificios
Emiliano Posado López	Departamento de Terrenos y Edificios
Esteban Maximilian Pershe	Escuela de Derecho

Y para que así conste, expido la presente certificación bajo el sello de la Universidad de Puerto Rico, en Río Piedras, Puerto Rico, hoy día veintinueve de mayo de 1981.



*Luis E. González Vales*  
Luis E. González Vales  
Secretario Ejecutivo

JURAMENTO

Yo, Esteban Maximilian Pershe, mayor de edad, casado, catequista universitario y vecino de Río Piedras, Puerto Rico, bajo juramento declaro que la presente fotocopia de este documento es copia fiel y exacta de su original.

*Esteban Pershe*  
DECLARANTE

Atestado por mí, el día 29 de mayo de 1981, en Río Piedras, Puerto Rico, yo, Esteban Maximilian Pershe, de edad y estado civil como se indica, y a quien conozco, doy fe de lo anterior. 26 de mayo de 1981.

*Alberto E. Lugo Jener*  
NOTARIO PUBLICO



COUNCIL OF HIGHER EDUCATION  
UNIVERSITY OF PUERTO RICO  
Rio Piedras, Puerto Rico

1980-81  
Certification number 175

I, Luis E. González Vales, Executive Secretary of the Council of Higher Education, CERTIFY-----

That the Council of Higher Education, in its meeting of May 13, 1981 considered the Requests of Postponement of Obligatory Retirement and agreed the following:

- 1- Grant retirement postponement for the year 1981-82 to the following persons:

Rio Piedras University Precinct

Elna LaVerne Walker	General Studies Faculty
Eduardo Montoulieu García	Planning Graduate School
José Ferrer Canales	Humanities Faculty
Félix Joglar Rosa	Pedagogy Faculty

Mayaguez Precinct

Francis R. S. Koo	Art and Science Faculty
Manuel Diaz Piferrer	Art and Science Faculty
Lucila M. Diaz Piferrer	Art and Science Faculty

Medical Science Precinct

Nathan Rifkinson	Medicine Faculty
Irving Fox	Medicine Faculty
Candida Larrazabal de Barras	Medicine Faculty
Leo Rorchin	Odonthology Faculty
Sidney Kaye	Forense Medicine Institute
Rafael Criado A. Unategui	Forense Medicine Institute
Aida Berkman de Lizardi	Infirmery School
Adelaida Sanavitis	College of Professionals Related with the Health

Regional Colleges Administration

Bonifacio Rivera González	University College of Technology-Arecibo
Heriberto de Jesús Rivera	University College of Technology-Arecibo
Benito Cabrera Medina	University College of Technology-Arecibo
Luis L. Martinez Fernandez	Ponce Regional College
Pascual Reyes	University College of Technology-Bayamon

2. Grant postponement of retirement for the month of July of 1981 to:

José P. Fernandez Miranda      Carolina Regional College

3. Deny the postponement of retirement to the following persons:

Rio Piedras University Precinct

Conchita Monefeldt Hosta	General Library
Andres Vélez Rosario	General Studies Faculty
Angel G. Bracero Rivera	Land and Building Department
Etanislao Rosado López	Land and Building Department
Ratimir Maximilian Pershe	School of Law

And to make it evident, I issue the present certification under the seal of the University of Puerto Rico, in Rio Piedras, Puerto Rico, today May ywenty nine, 1981.

(signed) Luis E. González Vales  
Executive Secretary

OATH

I, Ratimir Maximilian Pershe, of legal age, married, university professor and neighbor of Rio Piedras, Puerto Rico, under oath state that the present photocopy of this document is a true and exact copy of its original.

(signed) R. M. Pershe  
DECLARER

Affidavit number 92

Sowrn and suscribed before me by Ratimir Maximilian Pershe, of the personal circumstances stated above, and whom I know personally in San Juan, Puerto Rico, November 26, 1982; of all of which I ATTEST.

(Signed) Alberto B. Lugo Janer  
NOTAPY PUBLIC

EN EL TRIBUNAL SUPREMO DE PUERTO RICO

J 11611  
999.15

Ratimir Maximilian Pershe,

Peticionario,

v.

Núm. O-83-48

Certiorari

Enrique Irizarry, Presidente  
del Consejo de Educación  
Superior y otros,

Recurridos.

RESOLUCION

San Juan, Puerto Rico, a 26 de mayo de 1983.

A la anterior moción de reconsideración, vistas  
nuestras Resoluciones de 24 de marzo, 14 de abril  
y 5 de mayo del corriente, aténgase a lo dispuesto.

Lo acordó el Tribunal y certifica la señora  
Secretaria. El Juez Presidente señor Trías Monge  
se inhibió.

Lady Alfonso de Cumpiano  
Secretaria

## IN THE SUPREME COURT OF PUERTO RICO

J \* 466  
499.17

Ratimir Maximilian Pershe,

Petitioner

v.

Enrique Irizarry, President  
of the Council of Higher  
Education and others,

Respondents

Num. 10-83-48

Certiorari

## DECISION

San Juan, Puerto Rico, this 26 day of May, 1983.

To the preceding motion for reconsideration\*, in view of our Decisions of March 24, April 14 and May 5 of the current year, abide by that which has been decided.

This resolved the Court and certifies the Mistress Clerk of the Court. The Chief Judge Mister Trias Monge disqualified himself.

[Signed]

Lady Alfonso de Cumpiano  
Clerk of the Court

[Official Seal of the Court]:  
Commonwealth of Puerto Rico  
General Court of Justice  
Supreme Court

\*Referring to the Fourth Motion for Reconsideration (this note is supplied by the appellant).

NOTE: This document has been translated into English by the appellant.